

### **Remarks**

Please note that new counsel represent the applicants in this matter. Of claims 1-24 in this application, claims 1-15 are canceled, claim 16 is presently amended, and claims 18-24 newly added..

The office action of Feb 29, 2008 rejected independent claim 16 as obvious over Wratten and Lee. In justifying this combination of references, the office action characterizes Wratten as silent with regard to porosity. This is not entirely correct because Wratten teaches that the “plasmafilter or ultrafilter permits the passage into the ultrafiltrate or plasmafiltrate of any cytokines present in said stream of blood.” Wratten p. 2, ll. 51-52. Wratten also teaches that the “molecular weight of the principal known cytokines ranging between 9,000 and 17,000 Dalton.” Wratten p. 3, ll. 21-23. Further, Wratten discusses IL-6, which is purported to have a molecular weight of 26,000 Dalton. Wratten p. 3, ll. 21-23. Thus, one of ordinary skill in the art would understand that the Wratten device has a porosity designed to filter cytokines in the range of 9,000 to 26,000 Dalton.

Accordingly, the Wratten and Lee references are incompatible. Because Wratten’s purpose is to eliminate cytokines, one of ordinary skill in the art would have no reason to look to Lee (US 5,571,418) because Lee teaches the use of hemofilters that have pores which remove albumin from the blood. See, e.g., claim 1 of Lee, which discloses molecular weight exclusion limits of 100,000 to 150,000 Da for the passage of 70,000 Da molecules. In contrast, filters of much lower porosity are suitable for Wratten’s purpose of removing cytokines from the blood, the largest being 26,000 Daltons. Furthermore, the Lee device would be inoperative for that claimed purpose if it used filters designed for the removal of molecules of 26,000 Da or less, as taught by Wratten because molecules of about 70,000 Da would not pass through such filters and would not be removed.

It is clear from the Wratten disclosure that removal molecules of about 70,000 Da (which includes albumin) were not contemplated because such molecules are essential for maintaining oncotic pressure in the blood. As stated in Lee, at col. 9, ll. 12-33, due to both risk to the patient and expense, the practice in the art was to limit the pore in order to exclude albumin (i.e., retain it in the blood). In contrast, Lee makes provision for replacing the lost

albumin. Lee, at col. 9, ll. 31-32 (“Any risk of albumin loss will be offset by albumin replacement...”). Because the Wratten and Lee references teach contradictory approaches, they cannot be combined to reject the pending claims for obviousness.

Applicants therefore submit that all claims pending in the application are allowable over the art of record. Early notice to that effect is respectfully solicited. Reconsideration of the application and issuance of a notice of allowance are respectfully requested. It is believed that no extension of time is required, but Applicant hereby petitions for and request that any extension or other fee required for timely consideration of this application be applied and charged to Deposit Account No. 19-4972. The Examiner is requested to telephone the undersigned if any matters remain outstanding so that they may be resolved expeditiously.

### **Notice of Related Applications**

Notice is hereby given of the existence of the following pending U.S. applications submitted in the names of Applicants or to a licensee of the present application:

(a) Application Serial Number 10/796,882, filed March 8, 2004 published as 2004-0173530.

(b) Application Serial No. 11/387,556 filed March 23, 2006, published as 2006-0163138.

(c) Application Serial No. 10/524,448, filed (371 date) September 29, 2005, which published as 2006-0129082 on June 15, 2006. This application is assigned to or under an obligation of assignment to a licensee of the present application. The Lentz references of the accompanying IDS were cited in the prosecution of this application.

(d) Application Serial No. 11/934,978 filed November 5, 2004, which published as 2008-0110830. This application is related to U.S. Patent Nos. 6,736,972 and 7,291,122, listed on the accompanying IDS.

The Examiner is requested to review the entire file histories of those applications, including cited references, Office Actions, Responses, etc., and is asked to contact Applicants' Attorney if the Examiner would like the Applicants to supply copies of any or all of the information included in any of those applications. For any of those applications, if Applicants' Attorney is not contacted by the Examiner with such a request, then it will be assumed that the Examiner has reviewed or will review the file content of the application. The identification of the above-identified applications is not a waiver of secrecy for any of the applications. Applicants request coordination of the examination of the present application with examination of the above-identified applications.

Respectfully submitted,

/Robert A. Hess, Ph.D., #57,411/

Robert A. Hess, Ph.D.

Agent for Applicants

Reg. No. 57,411

Bromberg & Sunstein LLP

125 Summer Street, 11<sup>th</sup> Floor

Boston, MA 02110-1618

(617) 443-9292

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